

Applicant: Joseph R. Berger  
Serial No.: 11/726,105  
Filed: March 20, 2007  
Page 2 of September 21, 2011 Communication

**Remarks**

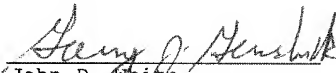
Page 3 of the August 3, 2011 Notice Of Allowability indicates that the text of Figure 7 is not fully readable. The Notice indicates that a corrected drawing sheet must be submitted.

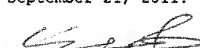
In response, applicant submits herewith as **Exhibit B** Replacement Sheet 7/9 (Figure 7). Applicant contends that the text of Replacement Sheet 7/9 is fully readable. Applicant also contends that the replacement drawing is in compliance with 37 CFR 1.121(d) and contains no new matter.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicant's undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee is deemed necessary in connection with the filing of this Communication. However, if any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

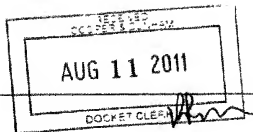
Respectfully submitted,

  
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<b>Certificate of Transmission</b>	
I hereby certify that this correspondence is being transmitted via the Electronic Filing System (EFS) to the U.S. Patent and Trademark Office on September 21, 2011.	
	9/21/11
Xueguang Sun	Date

7156/52427-WA

SPW/GSC/CS

**Notice of Allowability**

<b>Application No.</b>	<b>Applicant(s)</b>
10/799,264	FISHBEIN, DON
<b>Examiner</b>	<b>Art Unit</b>
GREGG POLANSKY	1629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 04/05/2011. CDN Deadline 11-17-11  
Issue/Pub Fee Due 11-03-11  
Remanded 10-03-11
2. ☒ The allowed claim(s) is/are 30, 32-34, 36-44, 46 and 47.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date 20110725.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. <input type="checkbox"/> Notice of References Cited (PTO-892)	5. <input type="checkbox"/> Notice of Informal Patent Application
2. <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)	6. <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No./Mail Date <u>7/25/2011</u> .
3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date <u>12/16/2010</u>	7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment
4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material	8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance
	9. <input type="checkbox"/> Other _____
/James D Anderson/ Primary Examiner, Art Unit 1629	/Gregg Polansky/ Examiner, Art Unit 1629

U.S. Patent and Trademark Office  
PTOL-37 (Rev. 08-06)

Notice of Allowability

Part of Paper No./Mail Date 20110725

Applicant: Don Fishbein  
Serial No.: 10/799,264  
Filed: March 12, 2004  
Exhibit A

**DETAILED ACTION**

***Application Status***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/16/2010 has been entered.

2. Applicant's Information Disclosure Statement, filed 12/16/2010, is acknowledged and has been considered.

**EXAMINER'S AMENDMENT**

3. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this Examiner's amendment was given in a telephone interview with Gary Gershek on 7/25/2011.

The application has been amended as follows:

Claim 30 is amended to recite: "A method of effecting weight gain after weight loss resulting from burn-induced trauma in a patient which comprises administering to the patient suffering from weight loss resulting from burn-induced trauma ~~40mg~~ 10 mg of oxandrolone per day, up to ~~400mg~~ 100 mg of oxandrolone per day, in conjunction with a protein supplement, for a period of three weeks, so as to effect weight gain in the patient, wherein the weight gained is maintained at eight weeks after discontinuation of the oxandrolone administration."

Claims 32-34, 36-42, 44, 46 and 47 are amended by replacing the "A" at the beginning of each claim with "The".

Claim 43 is amended to recite: "[[A]] The method according to claim 30 further ~~comprising administering during the period of oxandrolone administration a~~ wherein the protein supplement is administered to the patient to achieve a daily protein intake by the patient of 2.0 g/kg/day."

4. The following changes to the drawings have been approved by the Examiner and agreed upon by applicant: The text of Figure 7 is not fully readable and the leftmost text has been cut off. In order to avoid abandonment of the application, applicant must make these above agreed upon drawing changes.

5. The following is an Examiner's statement of reasons for allowance: The prior art does not fairly teach or suggest a method of effecting weight gain after weight loss resulting from burn-induced trauma by administering to said patient oxandrolone in conjunction with a protein supplement, in the claimed daily dosage, for a period of three weeks, wherein said weight gain is maintained at eight weeks after discontinuation of the oxandrolone administration.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to GREGG POLANSKY whose telephone number is (571)272-9070. The Examiner can normally be reached on Mon-Thur 9:30 A.M. - 7:00 P.M. EST.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Jeffrey S. Lundgren can be reached on (571) 272-5541. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregg Polansky/  
Examiner, Art Unit 1629

/James D Anderson/  
Primary Examiner, Art Unit 1629